



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF T-I-S-, INC.

DATE: MAY 23, 2018

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a software development and services company, seeks to employ the Beneficiary as a programmer analyst. It requests classification of the Beneficiary as a member of the professions holding an advanced degree under the second preference immigrant classification. Immigration and Nationality Act section 203(b)(2), 8 U.S.C. § 1153(b)(2). This employment-based immigrant classification allows a U.S. employer to sponsor a professional with an advanced degree for lawful permanent resident status.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish, as required, that the Petitioner had the continuing ability to pay the proffered wage, because its tax returns did not show sufficient net income or net current assets to pay the combined proffered wages of all of the beneficiaries of its applicable Forms I-140, Immigrant Petition for Alien Worker.¹ The Director declined to accept the Petitioner's audited financial statements as evidence of the Petitioner's ability to pay because the "accrual basis accounting method [cannot] be used to properly demonstrate ability to pay" the wages of multiple beneficiaries.

On appeal, and in response to our notice of intent to dismiss and request for evidence, the Petitioner submits additional evidence and asserts that its audited financial statements establish its ability to pay the combined wages of all of its applicable Form I-140 beneficiaries. Upon *de novo* review, we will sustain the appeal.

The regulation at 8 C.F.R. § 204.5(g)(2) requires a petitioner to provide copies of its annual reports, federal tax returns, or audited financial statements to establish its ability to pay the proffered wage. The Petitioner submitted its audited financial statements for each year from the priority date in 2015 onward.² The Petitioner's audited financial statements show sufficient net current assets to

¹ Where a petitioner has filed Form I-140 petitions for multiple beneficiaries, it must demonstrate that its job offer to each beneficiary is realistic, and that it has the ability to pay the proffered wage to each beneficiary. See 8 C.F.R. § 204.5(g)(2); see also *Patel v. Johnson*, 2 F. Supp. 3d 108, 124 (D. Mass. 2014).

² The audited financial statements were prepared pursuant to the accrual method of accounting, in which revenue is recognized when it is earned, and expenses are recognized when they are incurred. Internal Revenue Service Publication 538, <https://www.irs.gov/publications/p538/ar02.html> (last visited May 21, 2018). Here, the accrual method of accounting may be used to demonstrate the Petitioner's ability to pay the proffered wage.

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demonstrate the Petitioner's continuing ability to pay the combined wages of all of its applicable Form I-140 beneficiaries pursuant to 8 C.F.R. § 204.5(g)(2). The record otherwise establishes the eligibility of the Petitioner and the Beneficiary for the requested benefit.

ORDER: The appeal is sustained.

Cite as *Matter of T-I-S-, Inc.*, ID# 884887 (AAO May 23, 2018)